



H-1B RFE REFERENCE GUIDE

Writing a Detailed Job Description for H-1B Petitions

A common H-1B RFE issue is for USCIS to ask for additional clarification on the job responsibilities submitted. A considerable portion of RFEs state that the submitted job responsibilities do not contain enough detail, that the vagueness inhibits the USCIS examiner's understanding of what the occupation entails, therefore making the specialty occupation nature of the position untenable.

As the RFE seeks clarity and specificity, H-1B job duties should be drafted in a fashion that is undeniably clear and definite, even to someone who is an outsider to the specific industry (i.e. the USCIS officer). The duties should allude to technical aspects of the position, which helps to demonstrate why the job requires a minimum of a bachelor's degree in the named major.

Example of a Good Job Description

Title: Software Engineer II (level of the position is clearly stated)

Education and Experience Requirements: BS or MS in Computer Science or Electrical Engineering; 4+ years of experience required (degree and major is clearly noted, along with the experience requirement)

Job Duties:

- Analyze, design and develop tests and test-automation suites for Company ABC's proprietary cloud analytics software suite using (1) infrastructure automation technologies including Docker, Vagrant, etc., and (2) build automation technologies including Maven, Jenkins, etc. (25% of time).
 - Bachelor's degree courses needed to perform duty: *[insert typical courses from a Bachelor's program in CS/EE - please confirm that your H-1B beneficiary actually has these courses]*
- Design and develop processing platform using various configuration management technologies such as CFEngine and Ansible, etc. (10% of time)
 - Bachelor's degree courses needed to perform duty: *[insert typical courses from a Bachelor's program in CS/EE]*
- Modify Company ABC's existing software to correct errors, allowing it to adapt to new hardware, or to improve its performance using scripting languages like Perl, Shell, etc. and modern programming languages like Java, Python, etc. (35% of time)
 - Bachelor's degree courses needed to perform duty: *[insert typical courses from a Bachelor's program in CS/EE]*

- Design, develop and modify software systems, using scientific analysis and mathematical models to predict and measure outcome and consequences of design to fit user needs. (15% of time)
 - Bachelor's degree courses needed to perform duty: *[insert typical courses from a Bachelor's program in CS/EE]*
- Test software development methodology in an agile environment and provide ongoing maintenance, support and enhancements in existing systems and platforms. (15% of time)
 - Bachelor's degree courses needed to perform duty: *[insert typical courses from a Bachelor's program in CS/EE]*

Example of a Bad Job Description

Title: Software Engineer

Education and Experience Requirements: BS or MS (did not specify major or majors and did not specify experience required)

Job Duties:

- Writing code in C++ to operate with the radio-based communication system.
- Communicating and working with real time systems for signal processing.
- Conducting real time analysis through high speed computer and embedded systems. (vague, lacking specificity as to the sort of software issues)
- Help define processes and software engineering practices
- Strong communication skills and effective and enthusiastic collaborator, proven skills in hands-on testing and finding ways to break software (not even an actual duty, just talks about soft skills)

Properly Determining Wage Levels for H-1B Petitions

1. Background

When considering hiring a foreign-born worker, an inevitable part of the analysis for any U.S. company will be how much to pay that person. Unfortunately, it is not as simple as choosing an amount that fits your own pay scale. As part of the H-1B petition process, you will have to file a Labor Condition Application (LCA) with the Department of Labor (DOL) to certify that you will pay the sponsored H-1B employee the higher of (1) the "actual wage" at your workplace or (2) the "prevailing wage" in the industry.

The below will help clarify the idea of "prevailing wage" and how the four (4) levels are determined.

2. How to Determine Wage Level

Prevailing wage level determinations should be made based on an analysis of the requirements for particular position. Factor to consider include: tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in the particular role.

It is important to remember that wage levels are determined only after selecting the most relevant O*NET-SOC occupational code classification. The selection of the O*NET-SOC code should not be based solely on the title of the employer's job offer. You should consider the particulars of the offer and compare the full description to the tasks, knowledge, and work activities generally associated with an O*NET-SOC occupation to insure the most relevant occupational code has been selected.

3. The Four (4) Wage Levels

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered. Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. Words such as 'lead' (lead analyst), 'senior' (senior programmer), 'head' (head nurse), 'chief' (crew chief), or 'journeyman' (journeyman plumber) would be indicators that a Level III wage should be considered.

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

4. Step by Step Guide on Determining the Prevailing Wage Based on Worksite Location

- Step 1. Go to The Foreign Labor Certification Data Center's Online Wage Library at <http://www.flcdatacenter.com/>.
- Step 2. Select "FLC Wage Search Wizard"
- Step 3. Select a State/Territory
- Step 4. Select the worksite based on its County/Township or BLS Area
- Step 5. Enter a keyword of the job title
- Step 6. Review options.

Sample Result for Software Developer working in Mountain View, California

Area Code: 41940
Area Title: San Jose-Sunnyvale-Santa Clara, CA MSA
OES/SOC Code: 15-1133
OES/SOC Title: Software Developers, Systems Software
GeoLevel:1
Level 1 Wage:\$46.31 hour - \$96,325 year
Level 2 Wage:\$57.26 hour - \$119,101 year
Level 3 Wage:\$68.22 hour - \$141,898 year
Level 4 Wage:\$79.17 hour - \$164,674 year
Mean Wage (H-2B):\$68.22 hour - \$141,898 year

This wage applies to the following O*Net occupations:

15-1133.00 Software Developers, Systems Software

Research, design, develop, and test operating systems-level software, compilers, and network distribution software for medical, industrial, military, communications, aerospace, business, scientific, and general computing applications. Set operational specifications and formulate and analyze software requirements. May design embedded systems software. Apply principles and techniques of computer science, engineering, and mathematical analysis.

O*Net™ JobZone: 4

Education & Training Code: No Level Set

Ensuring Accurate Company VIBE Data

The USCIS uses their Web-based Validation Instrument for Business Enterprises (VIBE) program to verify employer data in employment-based petitions such as H-1Bs. The data collected is data from Dun and Bradstreet (D&B), an independent information provider. As a result of this method of data collection and maintenance it is not uncommon for there to be inaccuracies in company data such as business address information. As this can trigger an RFE we strongly suggest that you manually update your company's information with D&B by accessing the online portal at <https://iupdate.dnb.com/iUpdate/viewiUpdateHome.htm>. You should ensure that the company data provided on this website matches company data submitted to the USCIS in case filings. Updating your company information should be free if utilizing this website portal.